

DEPARTMENT OF COMMERCE  
International Trade Administration

A-552-801

Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce

FINAL DETERMINATION

We determine that frozen fish fillets produced by Lian Heng Trading Co. Ltd. (“Lian Heng Trading”) and Lian Heng Investment Co. Ltd. (“Lian Heng Investment”) (collectively, “Lian Heng”),<sup>1</sup> are circumventing the antidumping duty order on frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”), as provided in section 781(b) of the Tariff Act of 1930, as amended (“the Act”). See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 47909 (August 12, 2003) (“Order”). In addition, we determine that frozen fish fillets produced by Lian Heng are covered by the antidumping duty order on frozen fish fillets from Vietnam. We are also terminating the circumvention inquiry with respect to L.S.H. (Cambodia) Pte. Ltd. (“L.S.H.”), and Sun Wah Fisheries Co. Ltd. (“Sun Wah”), and rescinding the concurrently initiated scope inquiry. See Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, Import Administration to David M. Spooner, Assistant Secretary, Import Administration (“Decision Memorandum”), dated June 16, 2006.

---

<sup>1</sup> Lian Heng Trading Co. Ltd. (“Lian Heng Trading”) or Lian Heng Investment Co. Ltd. (“Lian Heng Investment”) (collectively “Lian Heng”). Lian Heng Trading and Lian Heng Investment are two separate entities. However, the two companies share the same Chairman and Chief Executive Officer, and both companies have exported subject merchandise to the United States.

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Import Administration,  
International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution  
Avenue, NW, Washington, DC, 20230; telephone (202) 482-3208.

SUPPLEMENTAL INFORMATION:

#### BACKGROUND

On February 22, 2006, the Department published the preliminary circumvention determination and rescission of scope inquiry. See Notice of Partial Affirmative Preliminary Determination of Circumvention, Preliminary Rescission of Scope Inquiry and Extension of Final Determination, 71 FR 9068 (February 22, 2006) (“Preliminary Determination”). On March 30, 2006, the Department was notified by the International Trade Commission (“ITC”) that consultations pursuant to section 781(e)(2) of the Act were not necessary. See Memorandum to the File from Alex Villanueva, Program Manager, dated April 3, 2006. On April 5, 2006, Piazza Seafood World LLC (“Piazza”) submitted new information on the record. On April 6, 2006, the Department notified all interested parties that it was retaining Piazza’s April 5, 2006, submission in its entirety and that additional information could be placed on the record by C.O.B. April 10, 2006. See Memorandum to the File from Alex Villanueva, Program Manager, dated April 6, 2006. The Department also informed parties that the deadline for submission of case and rebuttal briefs would be extended until April 19, 2006, and May 3, 2006, respectively. See Id. On April 10, 2006, Petitioners and Piazza submitted additional new information. On April 19, 2006, Petitioners and Piazza filed case briefs. On May 3, 2006, Petitioners and Piazza filed rebuttal case briefs. On June 9, 2006, the Department held a public hearing.

## SCOPE OF THE ANTIDUMPING DUTY ORDER

The product covered by this order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>2</sup> This order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. See Order at 47909.

## FINAL RESCISSION OF SCOPE INQUIRY

The Department continues to find that rescission of the scope inquiry is appropriate for the reasons stated in the Preliminary Determination. See Decision Memorandum at Comment 1.

---

<sup>2</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS.

## TERMINATION OF THE CIRCUMVENTION INQUIRY FOR L.S.H. AND SUN WAH

The Department continues to find that it is appropriate to terminate circumvention inquiry with respect to L.S.H. and Sun Wah for the reasons stated in the Preliminary Determination. See Decision Memorandum at Comment 4. As a result, no action will be taken with respect to exports of frozen fish fillets to the United States from these companies.

## STATUTORY PROVISIONS REGARDING CIRCUMVENTION

Section 781(b)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries of an antidumping duty order under section 781(b) of the Act, the Department relies upon the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; and (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding, the administering authority, after taking into account any advice provided by the Commission under section 781(e) of the Act, may include such imported merchandise within the scope of the such order or finding at any time such order or finding is in effect.

Section 781(b)(2) of the Act provides for the determination of whether the process is minor or insignificant. In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account (A) the level of investment in the foreign country, (B) level of research and development in the foreign country, (C) nature of the production process in the foreign country, (D) extent of production facilities in the foreign country, and (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

Section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country in an antidumping duty order or a finding under paragraph (1), the Department shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported in to the United States; and (C) whether imports into the foreign country of the merchandise described in accordance with section 781(b)(1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

#### ANALYSIS

We considered all of the comments submitted by the parties and find that application of adverse facts available, as applied to the factors under section 781(b)(1) of the Act, is appropriate. Specifically, with respect to section 781(b)(1)(A) of the Act, we find that the product subject to the circumvention inquiry and exported to the United States by Lian Heng,

frozen fish fillets, is the same class or kind of merchandise subject to the Order. With respect to section 781(b)(1)(B)(ii) of the Act, we find that, before importation, frozen fish fillets are completed by Lian Heng in Cambodia from Vietnamese-origin whole, live fish. With respect to section 781(b)(1)(C) of the Act, we find that, based on adverse facts available due to Lian Heng's failure to provide data that could be verified, the processing of basa and tra fish into frozen fish fillets with respect to Lian Heng's exports from Cambodia is a minor or insignificant process.<sup>3</sup> The Department also continues to find that under section 781(b)(1)(D) of the Act, based on Petitioners' record evidence, and as adverse facts available due to Lian Heng's failure to provide data that could be verified, the value of the Vietnamese-origin whole, live fish is significant compared to the value of the frozen fish fillets. Therefore, pursuant to section 781(b)(1)(E) of the Act, we affirm our preliminary determination that action is appropriate and necessary to prevent Lian Heng from circumventing the antidumping duty order on frozen fish fillets from Vietnam. Additionally, based on the additional factors to consider under section 781(b)(3) of the Act, we find that the patterns of trade and the levels of Cambodian importation of Vietnamese-origin whole, live fish support an affirmative finding of circumvention.

Consequently, under sections 781(b)(1), (2), and (3) of the Act, we find that Lian Heng has circumvented the Order by importing Vietnamese-origin whole live fish into Cambodia, where it was subsequently processed and completed into frozen fish fillets for export to the United States. Thus, pursuant to section 781(b) of the Act, frozen fish fillets processed in Cambodia by Lian Heng from Vietnamese-origin whole, live fish for export to the United States should be included in the antidumping duty order on frozen fish fillets from Vietnam. Finally,

---

<sup>3</sup> To determine whether a process is minor or insignificant pursuant to section 781(b)(1)(C) of the Act, the Department must consider the factors in section 781(b)(2) of the Act.

because the Department continues to find that AFA is appropriate in this final determination, the Department relied on the information supplied by Petitioners, and subsequently used for purposes of initiating this inquiry, to corroborate the secondary information used as adverse facts available, pursuant to section 776(c) of the Act. We find that the information supplied by Petitioners is reliable and relevant because it is based upon information from public sources including government publications regarding the processing of live fish into fish fillets from Cambodia. In addition, Petitioners provided information from Agifish, the largest fish fillets exporter from Vietnam, which the Department verified in the underlying investigation as well as information used by the ITC in making its final injury determination. Therefore, we find that the secondary information used as adverse facts available has probative value.

All issues raised by the interested parties to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this inquiry and the corresponding recommendation in this public memorandum, which are on file in the Central Records Unit (“CRU”), Room B-099 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

#### CONTINUATION OF SUSPENSION OF LIQUIDATION

In accordance with section 733(d) of the Act, the Department will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the Vietnam-wide rate, on all unliquidated entries of frozen fish fillets produced by Lian Heng that were entered, or withdrawn from warehouse, for consumption from October 22, 2004, the date of initiation of the

circumvention inquiry, through July 15, 2005.

For all entries of frozen fish fillets produced by Lian Heng entered on or after July 16, 2005, the Department will direct CBP to allow Lian Heng to certify that no Vietnamese-origin fish was used in the production of the frozen fish fillets. The Department will not request that CBP suspend liquidation, or require a cash deposit of estimated duties, at the Vietnam-wide rate, for any entries of frozen fish fillets accompanied by the certification in Appendix II in this notice. However, the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the Vietnam-wide rate of 63.88 percent of any entries of frozen fish fillets not accompanied by this certification in Appendix II of this notice.

The Department will not direct CBP to take any action with respect to Sun Wah and L.S.H. or any other Cambodian exporter other than Lian Heng.

#### FUTURE ADMINISTRATIVE REVIEWS

If requested, the Department may expand the third administrative review period back to October 22, 2004, the date of initiation of the circumvention inquiry, to include all of Lian Heng's entries covered by this determination. In addition, we hereby serve notice to Lian Heng that any certified entries are subject to verification by the Department. If a review of these certified entries is conducted, the Department will, at a minimum, examine whole fish country of origin documentation that Lian Heng is required to maintain, as an exporter of fish products to the United States, by the United States Food and Drug Administration's Hazard Analysis Critical Control Point ("HACCP")<sup>4</sup> program and by the Bioterrorism Act of 2002.<sup>5</sup> The Department will

---

<sup>4</sup> Hazard Analysis Critical Control Point. Details regarding this program can be found at <http://www.cfsan.fda.gov/~lrd/haccp.html>.

<sup>5</sup> Details regarding the Bioterrorism Act of 2002 can be found at: <http://www.fda.gov/oc/bioterrorism/bioact.html>.



also examine any other records Lian Heng maintains in its normal course of business supporting its certifications that no Vietnamese-origin fish was used in the production of its frozen fish fillets.

#### NOTICE TO PARTIES

This notice also serves as the only reminder to parties subject to the administrative protective orders (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department’s regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final circumvention determination is in accordance with section 781(b) of the Act and 19 CFR 351.225.

---

David M. Spooner  
Assistant Secretary  
for Import Administration

---

Date

## **Appendix I**

**Comment 1: Rescission of Scope Request**

**Comment 2: Lian Heng Determination**

**A. Application of AFA and the Criteria under Section 781(b) of the Act**

**B. Corroboration of AFA**

**Comment 3: Certification Requirements**

**Comment 4: Partial Rescission of Circumvention Inquiry**

## Appendix II

Certification of Lian Heng<sup>1</sup>\_\_\_\_\_

### CERTIFICATION TO U.S. CUSTOMS AND BORDER PROTECTION

1. Lian Heng hereby certifies that the frozen fish fillets being exported and subject to this certification were not produced from fish of Vietnamese origin of the following species: *Pangasius Bocourti* (commonly known as basa or trey basa), *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius* and commonly known as tra or trey pra), or *Pangasius Micronemus*.

2. By signing this certificate, Lian Heng also hereby agrees to maintain sufficient documentation supporting the above statement such as country of origin certificates for all fish used to process the exported frozen fish fillets.<sup>2</sup> Further, Lian Heng agrees to submit to verification of the underlying documentation supporting the above statement. Lian Heng agrees that failure to submit to verification of the documentation supporting these statements will result in immediate revocation of Lian Heng's certification rights and that Lian Heng will be required to post a cash deposit equal to the Vietnam-wide entity rate on all entries of frozen fish fillets of the species *Pangasius Bocourti* (commonly known as basa or trey basa), *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius* and commonly known as tra or trey pra), or *Pangasius Micronemus*. In addition, if the Department of Commerce identifies any misrepresentation or inconsistencies regarding the certifications, it may report the matter to U.S. Customs and Border Protection for possible enforcement action.

Signature:

Printed Name:

Title:

---

<sup>1</sup> Lian Heng Trading Co. Ltd. ("Lian Heng Trading") or Lian Heng Investment Co. Ltd. ("Lian Heng Investment") (collectively "Lian Heng")

<sup>2</sup> Documentation may include, but is not limited to the records that (EXPORTER OF RECORD) is required to maintain by the United States Food and Drug Administration's HACCP program and Bioterrorism Act of 2002 and other documents kept in the normal course of business.